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**OFFICE OF PETITIONS**

In re Application of  
Layman, et al.  
Application No. 09/635,830  
Filed: August 9, 2000  
Attorney Docket No. MS1-521US  
For: OBJECT PERSISTER

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: DECISION ON PETITION  
: UNDER 37 CFR 1.78(a)(3)  
:

This is a decision on the petition filed July 26, 2005, under 37 CFR 1.78(a)(6), to accept an unintentionally delayed claim under 35 U.S.C. § 119(e) for the benefit of the prior-filed application set forth in the amendment filed concurrently with the instant petition.

The petition is **DISMISSED** as moot for the reasons stated below.

37 CFR 1.78(a)(2)(ii) indicates that the time periods set forth therein do not apply if the later-filed application is: (1) an application for a design patent; (2) an application filed under 35 U.S.C. § 111(a) before November 29, 2000; or (3) a nonprovisional application which entered the national stage after compliance with 35 U.S.C. § 371 from an international application filed under 35 U.S.C. § 365 before November 29, 2000.

Since the instant nonprovisional application is an application filed under 35 U.S.C. § 111(a) prior to November 29, 2000, the provisions of 37 CFR 1.78(a)(6) for acceptance of a later claim for priority do not apply. Accordingly, the petition is dismissed as involving a moot issue.

In view of the above, the \$1,370.00 fee submitted for the petition under 37 CFR 1.78(a)(6) is unnecessary and will be credited to deposit account no. 12-0769.

Any inquiries concerning this decision may be directed to Petitions Attorney E. Shirene Willis at (571)272-3230.

The application is being referred to Technology Center Art Unit 2176 for further examination.

A handwritten signature in cursive script, reading "Frances Hicks".

Frances Hicks

Lead Petitions Examiner

Office of Petitions

Office of the Deputy Commissioner  
for Patent Examination Policy